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HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition (C) No.3261 of 2007

Petitioner — Sriniwas Verma, S/o. Late B.P. Verma, Aged about 34 years, R/o. Adhanpur Housing Board Colony, Dharam Pura, Dist. Bastar, CG.

Versus

Respondents

1) State of C.G., through P.S. Jagdalpur, Dist. Bastar – Jagdalpur, CG.

2) Smt. Simmi Verma, W/o. Sriniwas Verma, aged about 26 years, R/o. behind Khistdas Police Constable Compound, Naya Munda Para, Jagdalpur, CG.

(Writ Petition under Article 227 of the Constitution of India)

SB: Hon'ble Mr. Justice Satish K. Agnihotri

Present:
Shri G.S. Ahuluwalia, counsel for the petitioner
Shri Satish Gupta, Dy. Govt. Advocate for the State

ORAL ORDER
(Passed on 12th June, 2007)

By this petition filed under Article 227 of the Constitution of India, the petitioner challenges the order dated 10-5-2007 passed by the First Additional District Judge, Bastar, whereby and whereunder, the application filed by the petitioner under Order 6, Rule 17 of the Code of Civil Procedure (for short, "CPC") for amendment of the application, was rejected.

2) I have gone through the documents and the impugned order. I do not find any infirmity in the order passed by the Court below. It is admitted case that the petitioner was well aware of the fact which he sought to be incorporated by way of amendment subsequently by filing

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an application under Order 6, Rule 17 of the C.P.C,. The petitioner has further not justified the default on his part by not incorporating the same in the first application despite knowing the fact. Learned Judge after considering all the aspects of the matter dismissed the application on the ground that proviso to Rule 17 of Order 6 of the C.P.C., clearly provides that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

3) It is not a case of the petitioner that before commencement of trial, the petitioner was not aware of the facts and he could not raise the matter earlier. Now, the witnesses have been examined and the case is at the state of final hearing. At this stage, granting application of the petitioner would unnecessarily delay the trial, even otherwise, under proviso to Rule 17 of Order 6 of the C.P.C., amendment cannot be allowed at this stage.

4) It is well settled principle of law that under Article 227 of the Constitution of India, this Court has jurisdiction of judicial review of the order passed by the Court below, in the event, there is manifest and apparent error on the face of the proceedings based on the clear ignorance or utter disregard to the provisions of law or there is grave failure of justice or grave injustice has occasioned thereby. Further, this court can also entertain the petition in its supervisory jurisdiction if there is perversity, irregularity or illegality in the process of decision, not in the decision itself.

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5) Applying the above settled principles of law to the facts of the present case, it does not warrant an interference with the impugned order passed by the Court below.

6) Thus, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Raju